

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, DISSENTING IN PART**

In the Matter of Amendment of Part 22 of the Commission's Rules To Benefit the Consumers of Air-Ground Telecommunications Services; Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, WT Docket No. 03-103

Amendment of Parts 1 and 22 of the Commission's Rules To Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, WT Docket No. 05-42

Application of Verizon Airfone Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804, File No. 0001716212

Report and Order and Notice of Proposed Rulemaking, adopted December 15, 2004.

There is good and bad in today's *Air-to-Ground Order*. On the one hand, our actions have the potential to give airlines and passengers new communications technologies. The current air-to-ground narrowband service surely has not fulfilled expectations. There are few calls made each day and the service is high-priced and limited to voice. A new broadband air-to-ground service could allow a far greater diversity of services, including the ability to check email, access the Web, enhance avionic support, and improve homeland security communications.

On the other hand, the way the FCC has decided to launch this new service risks creating a monopoly for broadband air-to-ground services. The Order creates an auction where one company can lock up the only license that can support a true broadband air-to-ground service. That means that if a company bids enough, it can exclude all other competitors, leaving airlines with only one possible supplier and passengers with no choice. Experience shows that if a company has the chance to buy a monopoly license, it will pay a premium for it. That is because it allows them, with one fell swoop, to ensure that competitors will not be able to keep prices down or force them to innovate.

That result might be a feast for the monopolist, but it's famine for consumers. Airlines will have to do business with the monopolist at any price. That is why so many airlines stated on the record that we should ensure competition. It also means that when passengers want to access the Internet using a broadband service they will have to pay what the monopolist charges or have no broadband service at all on the airplane. It also means that when the Department of Homeland Security wants broadband service for Air Marshals, there will be no chance for a competitive bidding process, because only one company can offer the service. This could lead to taxpayers paying far more for this DHS no-competition contract than necessary. Historically, the risks of creating a monopoly led the Commission to create multiple licenses when it started the cellular service, PCS, satellite TV, satellite radio and in every other auction initiating a new service that I can think of. But we don't do so here.

While I am pleased that we include the chance for competing companies to use the auction to win two overlapping three MHz licenses in the Order, history doesn't indicate this will provide the competition consumers want. Some of my colleagues argue this provides the potential for competition. But I fear that this possibility is unlikely to be realized. There is substantial record evidence that two companies bidding for overlapping three MHz licenses will find it exceedingly difficult to defeat a company bidding on a monopoly license, whether that license is for 4 MHz or for 3 MHz. The potential monopolist has far more to gain and will pay a significant premium to eliminate competition. My colleagues also point to the fact that if a company buys the exclusive 3 MHz license, a second company will be able to compete with them using the remaining 1 MHz license. But this remainder license seems

unlikely to provide real competition. The 1 MHz licensee will have 1/3 the spectrum resources and the service it offers will likely have only 1/4 of the throughput. The 1 MHz licensee may be able to offer voice, but it will not be a real broadband competitor. Likewise, even the Order itself concludes that satellite services, while useful and important, are not similar enough to terrestrial air-to-ground services to provide adequate competition. So the unwieldy combinatorial auction, the orphaned 1 MHz narrowband licensee, and the dissimilar satellite service are all unlikely to protect consumers. I therefore must dissent to the decision not to ensure two competitive licenses in this Order.

Thanks to WTB and OET for their hard and good work.

**STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN
APPROVING IN PART, DISSENTING IN PART**

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The prospect of high speed Internet services in the airplane cabin should be met with great support. As we jet off to our latest destination, we all have an interest in downloading or uploading a presentation on the way to a conference, catching up on personal and corporate e-mail accounts for a couple of hours, or maybe even doing some on-line shopping for a child's upcoming birthday.

It seems the stuff of Buck Rogers, but we already are seeing the deployment of satellite-based high-speed Internet services on international long-distance routes. And with today's decision, we take an important step towards promoting terrestrial-based broadband services for domestic air travel. We configure our rules to allow for next-generation broadband air-ground services. Equally as significant, we rightly conclude that these broadband services can be provided with three megahertz of spectrum, and that it is technically feasible for two licensees to provide broadband air-ground service with overlapping three megahertz licenses.

I am pleased that these technical decisions have allowed us to move away from only making available a single four megahertz license and to put in place restrictions that ensure that one licensee does not control all of the 800 MHz air-ground spectrum. Such an outcome would not have matched up with technical realities, and would in no way have served the public interest.

But we lost a golden opportunity here to guarantee true broadband competition. While a future auction likely will result in two unique licensees, it is agreed that a licensee with one megahertz of spectrum will be unable to compete against a licensee with three megahertz for a true broadband service. We could have easily made a change to the item to ensure that the broadband air-ground market would have been served by two competitors. The item already concludes that a licensing approach with two overlapping broadband licenses is technically feasible. For me, the benefits of competition in the broadband air-ground market far outweigh any minor restrictions that possibly would arise out of the overlapping license option. A competitive market ensures price discipline and technical innovation that simply may not flow from a single provider market.

The Commission has historically tried to ensure a minimum of two similarly situated licensees given the obvious problems with sole provider situations. I disagree with the decision to allow a single air-ground broadband license and dissent from that portion of the item.